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RUEHCV/AMEMBASSY CARACAS 9107
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E.O. 12958: N/A
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SUBJECT: OSIPTEL UPHOLDS ITS MOBILE TERMINATION REGULATION

REF: A) Lima 436 B) Lima 5073 and previous

¶1. (U) Summary. Osiptel, Peru's telecommunications regulator, issued its final resolution on February 9 declaring Telefonica's petition unfounded, thereby upholding its November regulation. Telefonica had argued that the Osiptel regulation was markedly different from its earlier proposal, that it did not include external factors in its costs and that it did not account for future expansion and investment by mobile companies. This bodes well for Nextel and AmericaMovil, Peru's other mobile providers. The first step in regulating rates began on January 1, 2006 -- mobile rates will be lowered by 54 percent to between \$0.1056-\$0.0922 by 2009. End Summary.

Telefonica Disagrees with
Osiptel's Cost Model

¶2. (U) In November, after taking into account public comments, Osiptel published its final resolution to regulate mobile termination rates (ref B). According to the regulation, Osiptel would reduce mobile termination rates over a three-year period beginning January 1, 2006. The final regulation differed from the original July proposal in that Osiptel further reduced the mobile termination rates and modified its cost basis.

Company	Original Rate	Temp Rate Jun 2005	2006	2007	2008	2009
Nextel	\$.250	\$.2053	\$.1772	\$.1491	\$.1210	\$.0929
TdP	\$.207	\$.2053	\$.1770	\$.1487	\$.1204	\$.0922
America Movil/TIM	\$.250	\$.2053	\$.1804	\$.1555	\$.1305	\$.1056

Source: OSIPTEL

¶3. (U) On December 14, the last day before the regulation would become law, Telefonica del Peru, Peru's monopoly telecommunications provider, filed a complaint against the Osiptel resolution, calling for its modification. Telefonica charged that because Osiptel's final resolution

varied markedly from its original July proposal, the regulator should have held another comment period before issuing the final regulation. Telefonica also accused the Osiptel regulation of stifling creativity and innovation because by lowering termination rates, Osiptel eliminated the incentive for companies to introduce new products. Instead, Telefonica demanded that Osiptel regulate rates by including external factors in its cost model.

¶4. (U) Osiptel notified both AmericaMovil and Nextel about TdP's complaint on January 18. (Note: Osiptel received TdP's petition just days before the Government closed for the winter holiday. Edwin San Roman, President of Osiptel, informed us that Osiptel "officially" received the petition on January 3, when the Government reopened for business. End Note.) Both companies had five days to respond to TdP's charges. Osiptel later extended the comment period an additional five days, per Nextel's request. According to Peruvian law, Osiptel had until February 9 to make a decision on Telefonica's petition. San Roman informed us on February 1 that Osiptel had every intention of meeting the deadline.

¶5. (U) On February 9, Osiptel issued resolution 007/2006, declaring Telefonica's complaint unfounded, thereby upholding its original November regulation. In a 12-page document published in El Peruano on February 16, Osiptel answered each of Telefonica's charges and argued that Telefonica's requests would raise mobile termination rates to above the international average. Osiptel also took the opportunity to defend its plan for a gradual reduction of rates, explaining that the plan allowed companies to continue to expand services and improve the efficiency of services over time.

¶6. (SBU) San Roman informed us that if Telefonica wishes to pursue its complaint, it could take the case to the Judiciary. He noted that Osiptel would continue with its plan to regulate mobile termination rates during any judicial proceeding. Given the slow nature of Peru's judicial system, San Roman commented that mobile rates would like to be regulated before any litigation could be completed.

Comment

¶7. (SBU) We believe that Telefonica is unlikely to pursue a costly judicial case against Osiptel. San Roman pointed out that the Osiptel regulation attempted to balance comments from all three mobile providers while establishing a termination rate that was based on costs. While he acknowledges that the regulation is not perfect, he highlighted that it was the best Osiptel could do in the current situation and that it lowered the rates to the international average, fostering competition and expansion in the mobile market.

ARELLANO